DEPARTMENT OF STATE REVENUE

04-20120395.LOF

Letter of Findings: 04-20120395
Gross Retail and Use Tax
For the Years 2008, 2009, and 2010

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ISSUES

I. Public Transportation Exemption – Gross Retail Tax.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-3-2(a); IC § 6-2.5-5-27; IC § 6-8.1-5-1(c); Container Corp. v. Franchise Tax Bd., 463 U.S. 159 (1983); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Mynsberge v. Dep't of State Revenue, 716 N.E.2d 629 (Ind. Tax Ct. 1999); Tri-States Double Cola Bottling Co. v. Dep't of State Revenue, 706 N.E.2d 282 (Ind. Tax Ct. 1999); General Motors Corp. v. Indiana Dept. of State Revenue, 578 N.E.2d 399 (Ind. Tax Ct. 1991); Indiana Dept. of State Rev. v. Kimball Int'l Inc., 520 N.E.2d 454 (Ind. Ct. App. 1988); Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp., 310 N.E.2d 96 (Ind. Ct. App. 1974); Butler Bros. v. McColgan, 111 P.2d 334 (Cal. 1941).

Taxpayer argues that it is not required to pay sales tax on certain transactions because Taxpayer is entitled to claim the "public transportation" exemption.

II. Lease Payments – Gross Retail Tax.

Authority: IC § 6-2.5-4-4; IC § 6-2.5-5-27; IC § 6-2.5-8-8(a); IC § 6-8.1-5-1(c).

Taxpayer maintains it is not required to collect sales tax when it charges related entities for the use of a bunkhouse.

III. Damaged Merchandise Storage Charges – Gross Retail Tax.

Authority: IC § 6-2.5-1-2; IC § 6-2.5-2-1(a); IC § 6-2.5-4-1(a); IC § 6-2.5-4-1(b); IC § 6-8.1-5-1(c); Wendt LLP v. Indiana Dept. of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012).

Taxpayer states that it is not required to collect sales tax on charges purportedly imposed to store damaged freight merchandise.

IV. Vehicle Leases – Gross Retail Tax.

Authority: Sales Tax Information Bulletin 28L (July 2007).

Taxpayer claims that it was not required to collect sales tax when it leased vehicles to "Wholesale Company" because the Wholesale Company is located in Michigan.

V. Sampling Methodology – Gross Retail Tax.

Authority: IC § 6-8.1-3-12(b); IC § 6-8.1-5-1(c).

Taxpayer maintains that statistical sampling performed by the Department's audit was flawed because the computer download of Taxpayer's total sales did not contain "sales" but of "invoiced accounts receivable."

VI. Miscellaneous Capital Assets – Gross Retail Tax.

Authority: IC § 6-2.5-5-27; IC § 6-8.1-5-1(c); Indiana Dept. of State Rev. v. Kimball Int'l Inc., 520 N.E.2d 454 (Ind. Ct. App. 1988).

Taxpayer states that it purchased miscellaneous capital assets for which it is purportedly not required to pay sales tax or self-assess use tax because Taxpayer is entitled to claim the public transportation exemption.

VII. Miscellaneous Exempt Items – Gross Retail Tax.

Authority: IC § 6-2.5-5-27; Sales Tax Information Bulletin 12 (July 2010).

Taxpayer states that it purchased miscellaneous items of tangible property which are exempt because the items are necessary to the provision of transportation services.

VIII. Service Provider – Gross Retail Tax.

Authority: IC § 6-2.5-5-27; IC § 6-8.1-5-1(c).

Taxpayer argues that it was not required to collect sales tax on transactions with "Shuttle Company" because the services provided by Shuttle Company are necessary to the provision of public transportation.

STATEMENT OF FACTS

Taxpayer is an Indiana business which leases, rents, and maintains trucks, tractors, trailers, and other specialized equipment. Taxpayer is one member of a larger group of related businesses.

The Department of Revenue ("Department") conducted an audit review of Taxpayer's business records employing a statistical sampling methodology agreed upon by both the Department and Taxpayer as "the most efficient way forward to conduct [the] audit."

The Department's audit began June 2010; audit personnel worked with Taxpayer's representatives until April 2012. The audit report was completed May 2012. The audit resulted in the assessment of additional sales/use tax. In August 2012, Taxpayer submitted a written protest arguing that the audit was flawed and that Taxpayer

was denied "due process" during the course of the audit.

The Department agreed to perform a supplemental audit review taking into consideration Taxpayer's numerous concerns. The supplemental review was completed February 2013. After release of the supplemental review, Taxpayer found additional fault with the Department's conclusions and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representatives explained the basis for the protest.

This Letter of Findings results.

I. Public Transportation Exemption – Gross Retail Tax.

DISCUSSION

Taxpayer argues that it is entitled to claim the "public transportation" sales tax exemption because Taxpayer claims it is one entity in a larger "controlled group of corporations" ("Corporation") which is collectively in the business of providing public transportation services.

Corporation consists of seven related entities. One of the entities – Taxpayer – owns all the equipment used by the various operating companies and leases that equipment to its sister entities and to third-party customers; three of the entities are "operating trucking" companies; one of the entities provides management services to the other related entities; one of the entities provides "logistic services" to a third-party manufacturing company; one of the entities provides "logistic services" to an unrelated manufacturer which produces building supplies.

Taxpayer contends that it is an "integrated corporation, under common control, conducts a unitary transportation business, and as such qualifies for the public transportation exemption under IC § 6-2.5-5-27...."

The cited exemption statute states:

> Transactions involving tangible personal property and services are exempt from the state gross retail tax, if the person acquiring the property or service directly uses or consumes it in providing public transportation for persons or property.

Pursuant to IC § 6-2.5-2-1, a sales tax, known as state gross retail tax, is imposed on retail transactions made in Indiana unless a valid exemption is applicable. Retail transactions involve the transfer of tangible personal property. IC § 6-2.5-3-2(a). A complementary excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction. IC § 6-2.5-3-2.

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). The presumption in Indiana is that all retail sales are subject to sales tax unless expressly exempted by statute. IC § 6-2.5-2-1 ("An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana... except as otherwise provided in this chapter....").

In applying any tax exemption, the general rule is that "tax exemptions are strictly construed in favor of taxation and against the exemption." Indiana Dept. of State Rev. v. Kimball Int'l Inc., 520 N.E.2d 454, 456 (Ind. Ct. App. 1988). A statute which provides a tax exemption... is strictly construed against the taxpayer. Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp., 310 N.E.2d 96, 97 (Ind. Ct. App. 1974). "[W]here... an exemption is claimed, the party claiming the same must show a case, by sufficient evidence, which is clearly within the exact letter of the law." Id. at 101.

IC § 6-2.5-5-27 like all such tax exemption provisions, is strictly construed against exemption from the tax. Tri-States Double Cola Bottling Co. v. Dep't of State Revenue, 706 N.E.2d 282, 283 (Ind. Tax Ct. 1999); Mynsberge v. Dep't of State Revenue, 716 N.E.2d 629, 636 (Ind. Tax Ct. 1999). Nevertheless, the Department is well aware of the countervailing rule that a "statute must not be construed so narrowly that it does not give effect to legislative intent because the intent of the legislature embodied in a statute constitutes the law." General Motors Corp. v. Indiana Dept. of State Revenue, 578 N.E.2d 399, 404 (Ind. Tax Ct. 1991).

Taxpayer states that it can establish an "organic" unitary relationship between Taxpayer and the Corporation's various operating entities and that viewed in context, the Taxpayer and its related entities are entitled to claim the public transportation exemption permitted under IC § 6-2.5-5-27 because the Corporate entities are collectively in the business of providing public transportation.

Taxpayer points out the United States Supreme Court's jurisprudence has established what is classified as a "unitary business" concept. The concept allows a state to adopt formulary apportionment taxing some income (received by a taxpayer's affiliates), which does not have its source in the taxing state. In determining the unitary relationship, the Court found that contributions to business income is considered unitary when there is unity of ownership; unity of subsidiaries results from functional integration, centralization of management, and economies of scale. Container Corp. v. Franchise Tax Bd., 463 U.S. 159, 179 (1983); The "unitary nature of [petitioner's] business is definitely established by the presence of the following circumstances: (1) unity of ownership; (2) unity of operation as evidenced by central purchasing, advertising, accounting and management divisions; and (3) unity of use in its centralized executive force and general system of operation." Butler Bros. v. McColgan, 111 P.2d

334, 341 (Cal.1941), aff'd, 315 U.S. 501 (1942).

However, whether Taxpayer can or cannot establish a unitary relationship is ultimately irrelevant because Taxpayer is mixing apples and oranges creating a unique blend of sales and income tax law and principles. Taxpayer's argument rests on a hybrid interpretation of sales and income tax law which finds no support in either statute or common sense. For purposes of the sales tax issues here raised, the issue is whether Taxpayer is in the business of providing public transportation.

The various Corporate entities – including Taxpayer – chose an organizational structure which presumably provided the Corporate entities certain business advantages; having done so, there is no authority which allows a listed entity such as Taxpayer to recharacterize its separate entity status in order to collectively obtain a narrowly defined sales and use tax advantage.

FINDING

Taxpayer's protest is respectfully denied.

II. Lease Payments – Gross Retail Tax.

DISCUSSION

Taxpayer built bunkhouses at its business location. The bunkhouses are used by the related entities' drivers while the drivers' trucks are being repaired, cleaned, or while on federally mandated ten-hour rest breaks.

To recover the costs, Taxpayer invoices its related operating companies. The Department's audit reviewed the invoices and determined that Taxpayer should have collected sales tax because – according to the audit – "the invoices are for furnishing of accommodations for less than 30 days."

Taxpayer contends that the use of the bunkhouse is simply a professional convenience provided to the operating companies and is incidental to the Taxpayer's leasing business. Taxpayer concludes that it was not required to collect sales tax when it rented the accommodations. Taxpayer explains that it "is not in the business of renting or furnishing [] accommodations for periods of less than 30 days."

The rule is found at IC § 6-2.5-4-4 which states in part:

(a) A person is a retail merchant making a retail transaction when the person rents or furnishes rooms, lodgings, or other accommodations, such as booths, display spaces, banquet facilities, and cubicles or spaces used for adult relaxation, massage, modeling, dancing, or other entertainment to another person:

(1) if those rooms, lodgings, or accommodations are rented or furnished for periods of less than thirty (30) days; and

(2) if the rooms, lodgings, and accommodations are located in a hotel, motel, inn, tourist camp, tourist cabin, gymnasium, hall, coliseum, or other place, where rooms, lodgings, or accommodations are regularly furnished for consideration.

(b) Each rental or furnishing by a retail merchant under subsection (a) is a separate unitary transaction regardless of whether consideration is paid to an independent contractor or directly to the retail merchant.

As noted above, IC § 6-8.1-5-1(c) provides that "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made."

While the Department is prepared to agree that Taxpayer's core business may be leasing trucks, it is unable to agree that Taxpayer is "not in the business of renting... accommodations for periods of less than 30 days." Taxpayer constructed accommodations, rented those accommodations, billed its sister entities for the use of the accommodations, and received payments based on those bills.

Insofar as Taxpayer's argument that the rental transactions are exempt, IC § 6-2.5-5-27, provides an exemption for purchases of services and property when the purchaser is engaged in public transportation. IC § 6-2.5-8-8(a) allows that purchaser to provide the vendor – such as in this case Taxpayer – an exemption certificate verifying that the transaction and relieving the seller from responsibility for collecting the tax.

A person, authorized under subsection (b), who makes a purchase in a transaction which is exempt from the state gross retail and use taxes, may issue an exemption certificate to the seller instead of paying the tax. The person shall issue the certificate on forms and in the manner prescribed by the department. A seller accepting a proper exemption certificate under this section has no duty to collect or remit the state gross retail or use tax on that purchase.

However, in this case the Taxpayer provided no documentation establishing that the subject transactions are exempt or that the various purchasers of the accommodations is entitled to the exemption sought.

Taxpayer has failed to meet its burden under of IC § 6-8.1-5-1(c) of establishing that the proposed assessment is wrong.

FINDING

Taxpayer's protest is respectfully denied

III. Damaged Merchandise Storage Charges – Gross Retail Tax.

DISCUSSION

Taxpayer states that when one of its related operating companies receives a claim that the company damaged merchandise, the damaged merchandise is brought to Taxpayer's facility. The damaged merchandise remains at Taxpayer's facility until a decision is reached to settle the claim or to dispose of the merchandise.

Taxpayer charged the Corporation's operating companies for storing the merchandise. The audit found that Taxpayer should have collected sales tax on the charges. Taxpayer disagrees and cites to Wendt LLP v. Indiana Dept. of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012). In that case, the court reviewed whether the petitioner was entitled to purchase tangible personal property without paying sales tax on the ground that petitioner was predominately engaged in public transportation. Id. at 488-89. The court found that "[T]emporary storage is considered to be an integral part of rendering public transportation." Id. at 488.

IC § 6-2.5-2-1(a) imposes sales tax on retail transactions made in Indiana. IC § 6-2.5-1-2 defines a retail transaction as "a transaction of a retail merchant that constitutes selling at retail as described in IC § 6-2.5-4-1... or that is described in any other section of IC § 6-2.5-4." IC § 6-2.5-4-1(a) provides that "[a] person is a retail merchant making a retail transaction when he engages in selling at retail." IC § 6-2.5-4-1(b) further explains that a person sells at retail when he "(1) acquires tangible personal property for the purpose of resale; and (2) transfers that property to another person for consideration."

A transaction subject to the state's sales tax necessarily involves the transfer of "tangible personal property." A review of the single invoice supplied by Taxpayer is sufficient to establish that Taxpayer was hired to provide "drywall storage" service and that the invoiced transaction did not involve the transfer of tangible personal property. Taxpayer's "public transportation" argument aside, under IC § 6-8.1-5-1(c), Taxpayer has met its burden of establishing the transaction was not subject to sales/use tax.

FINDING

To the extent that Taxpayer supplies additional, complete invoices establishing that Taxpayer was paid to provide "drywall storage," Taxpayer's protest is sustained.

IV. Vehicle Leases – Gross Retail Tax.

DISCUSSION

The Department's audit found that vehicle rental transactions with a particular third-party customer –Wholesale Company – were not exempt from sales tax. The audit also found that Taxpayer had been collecting sales tax from Wholesale Company but failed to remit the tax to the state.

Taxpayer states that it was not required to collect sales tax because Wholesale Company is located in Michigan and the trucks are "domiciled" in Michigan.

Taxpayer cites to Sales Tax Information Bulletin 28L (July 2007), 20070801 Ind. Reg. 045070433NRA, which states in part:

> Taxability of a lease is NOT based upon residency of the lessee (customer). The determination is based upon the vehicle's or trailer's state of primary property location, per terms of the lease agreement.
>
> A lease is subject to Indiana sales tax if the vehicle is to be primarily located within Indiana. A lease where the vehicle is to be primarily located in another state will be subject to that state's sales/use tax and will not be subject to the Indiana sales tax. The lessor shall collect and remit the appropriate sales tax to the appropriate taxing jurisdiction.
>
> The state sales tax on a lease of any motor vehicle or trailer must be in accordance with I.C. 6-2.5-13-1, General Sourcing Rules. The term "sourcing" refers to rules used to determine which state's sales tax is applicable to a transaction. I.C. 6-2.5-13-1 treats taxation of lease income differently than income derived from sales of motor vehicles. A lease originating in Indiana is subject to Indiana sales tax if the "primary property location" of the vehicle or trailer is indicated on the lease as being located in Indiana. The determination of which state's tax is to be collected on a lease is different for a periodic lease versus a lease that does not require periodic payments.
>
> A. Leases With Periodic Payments – Per I.C. 6-2.5-13-1(f)(1) For a lease or rental that requires recurring periodic payments (monthly payments), all lease payments (down payments, manufacturer's rebates, equity in trade-in resulting in a capital cost reduction, and each periodic lease payment) are to be sourced to the primary property location of the motor vehicle or trailer. The primary property location shall be as indicated by an address for the property provided by the lessee (user) that is available to the lessor (owner) from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This address shall not be altered by intermittent use at different locations. A nonresident may enter into a lease contract where the lease is originated at the Indiana dealership but the motor vehicle's primary location (where the vehicle is to be registered/licensed) is another state. Sales/use tax on the lease will be due to the state of primary property location. In most periodic leases, the sales tax will be due to the state shown on the lease contract as the state where the motor vehicle or trailer will be licensed for highway use. This is commonly the home state address of the lessee.
>
> B. Leases Without Periodic Payments – Per I.C. 6-2.5-13-1(f)(2) For a lease or rental that does not require recurring periodic payments (one lumpsum payment), the payment is sourced the same as a retail sale (see IB 28S). Thus, a lease which requires the entire lease to be paid in one lump sum payment (generally at the time of lease inception) shall be treated the same as a retail sale and the entire amount received upon the lease shall be subject to the Indiana sales tax. Indiana sales tax will be due on the entire lease if the lessee takes physical possession and control of the leased vehicle within Indiana, regardless of state of residence of the lessee or location where the vehicle will be primarily located, registered or licensed. (Emphasis added).

The evidence supplied by Taxpayer established that it entered into a lease agreement with an out-of-state company which required "recurring periodic payments." The lease agreement establishes that the out-of-state company has a Michigan address. Therefore the lease agreement falls squarely within the provision found in Sales Tax Information Bulletin 28L which states that the lease payments "are to be sourced to the primary property location of the motor vehicle or trailer." Id. The "primary property location" of the leased vehicles is determined by "by an address for the property provided by the lessee (user) that is available to the lessor (owner) from its records maintained in the ordinary course of business...." Id.

The periodic lease payments received from Wholesale Company are not subject to Indiana's sales tax. As summarized in the Information Bulletin, "In most periodic leases, the sales tax will be due to the state shown on the lease contract as the state where the motor vehicle or trailer will be licensed for highway use. This is commonly the home state address of the lessee." Id.

To the extent that Taxpayer is capable of providing documentation substantiating that it rented vehicles to Wholesale Company, Taxpayer's protest is sustained.

However, it should be noted that this Letter of Findings addresses only the lease payments made by Wholesale Company. Taxpayer did not question – nor does the Letter of Findings address – any of the other ancillary charges either called for in the lease agreement or paid by Wholesale Company to Taxpayer.

In addition, it should also be noted that, to the extent Taxpayer collected sales tax from Wholesale Company, it is not entitled to retain those amounts. Taxpayer has two choices; it may refund the tax directly to Wholesale Company and retain documentation establishing that it did so or it may remit the tax to the Department and inform Wholesale Company it is entitled to request a refund directly from the Department.

FINDING

Subject to an audit review of Taxpayer's documentation, Taxpayer's protest is sustained.

V. Sampling Methodology – Gross Retail Tax.

DISCUSSION

From the outset, the Department's audit employed a statistical sampling method to review Taxpayer's taxable purchases. According to the original audit report:

A pull list was generated from the [Accounts Payable] download based on the accounts selected for review. The pull list was then forwarded to the [T]axpayer so they can pull the necessary invoices.

Taxpayer now disagrees with the sampling methodology. Taxpayer explains that the methodology improperly "uses invoices for various transactions that do not always constitute sales. Invoices also included intercompany transfers, loan payments, and interest income, investment income, sales of equipment, federal and state income tax refunds...."

Taxpayer states that the sampling was flawed because the audit relied on a list which included charges which were not subject to tax. Taxpayer states that "[a]pplying the error rate to anything other than Indiana sales overstates the assessment. The only items that are possible errors of application of Indiana sales tax would be sales in Indiana."

It should be noted that the audit acted within its authority to conduct a "statistical sampling" of Taxpayer's transactions and to propose an assessment based on that sampling. The authority to do so is found at IC § 6-8.1-3-12(b) which states:

> The department may audit any returns with respect to the listed taxes using statistical sampling. If the taxpayer and the department agree to a sampling method to be used, the sampling method is binding on the taxpayer and the department in determining the total amount of additional tax due or amounts to be refunded.

Taxpayer's objection to the methodology employed in the statistical sampling is speculative. There is no indication whatsoever that the audit's sampling methodology was technically nor substantively flawed or that the sample contained expense items it should not have included such as interest payments or investment income. IC § 6-8.1-5-1(c) provides that the assessment of the tax is presumed correct and that Taxpayer has the burden of establishing that the statistical sample was "wrong." Taxpayer failed to do so.

FINDING

Taxpayer's protest is respectfully denied.

VI. Miscellaneous Capital Assets – Gross Retail Tax.

DISCUSSION

According to Taxpayer, the Department's audit "assessed use tax on... capital assets including "bunkhouse improvements, forklift, water softeners, and a laser jet printer."

Taxpayer states that the bunkhouse improvements and water softeners are equipment directly related to the Corporation's transportation business and that Taxpayer is entitled to purchase these items exempt from sales tax pursuant to IC § 6-2.5-5-27. Similarly, Taxpayer states that the forklift is "used to load and unload freight for temporary storage during the transportation process and should therefore be exempt under the transportation exemption."

As noted in Part I above, Taxpayer is in the business of renting and leasing vehicles to related entities and third-party customers. Consistent with the decision reached in Part I, the Department is unable to agree with Taxpayer's argument that Taxpayer "can establish an 'organic' unitary relationship between Taxpayer and the

corporation's various operating entities" and that Taxpayer and the related entities are collectively entitled to the public transportation exemption. Given that, "tax exemptions are strictly construed in favor of taxation and against the exemption," Kimball Int'l Inc., 520 N.E.2d at 456, Taxpayer has failed to meet its burden under IC § 6-8.1-5-1(c) of establishing that the related assessment was "wrong."

FINDING

Taxpayer's protest is respectfully denied.

VII. Miscellaneous Exempt Items – Gross Retail Tax.

DISCUSSION

The audit found that Taxpayer purchased various items such as "uniforms, towels, mats, salt, shop supplies, tools, equipment rental... pig oil, gloves, lights, gas for fork trucks... toilet tissues, soap and towels...." Taxpayer states that all of these items are exempt from sales tax because all the items are "reasonably necessary to provide public transportation." Taxpayer relies on IC § 6-2.5-5-27 as statutory for authority for the exemption it seeks. More specifically, cites to Sales Tax Information Bulletin 12 (July 2010), 20100623 Ind. Reg. 045100390NRA, as authority for its claim. Taxpayer specifically relies on the following provision:

> Tangible personal property bought by a public transportation provider may be purchased exempt from sales or use tax if the property is to be predominately and directly used in providing public transportation. Property is directly used in providing public transportation if the property is reasonably necessary to provide public transportation.

However, as noted in Parts I and VI above, Taxpayer has not established that it is entitled to claim the public transportation exemption because Taxpayer is clearly not in that business; Taxpayer is in the business of renting others trucks and trailers. Therefore, it is not necessary to address the question of whether the items mentioned are or are not "reasonably necessary to provide public transportation."

FINDING

Taxpayer's protest is respectfully denied.

VIII. Service Provider – Gross Retail Tax.

DISCUSSION

Taxpayer argues that it was not required to collect sales tax on transactions with a related company here called "Shuttle Company" because the services provided by Shuttle Company are purportedly necessary to the provision of public transportation. The transactions included lease payments, fuel, and truck parts.

Taxpayer states that the services provided by Shuttle Company are necessary and integral to the provision of public transportation and that – presumably – Shuttle Company is entitled to claim the public transportation exemption found at IC § 6-2.5-5-27. Taxpayer explains that Shuttle Service operates at the "beginning of the transportation process for transporting drywall from [manufacturer's] plant to its customers." Shuttle Service is responsible for assuring that vehicles are positioned at its customer's location as needed, that the trailers are equipped with tarps or protective covers, and that the customer's goods are firmly secured before transport begins. Shuttle Service does not actually operate the vehicles. That task is performed by a third-party trucking which "will pick up the trailer to make the delivery to [manufacturer's] customers."

It is Taxpayer's contention that Shuttle Service along with all the other Corporate entities is in the public transportation business and that any transactions between Shuttle Service and Taxpayer are exempt.

Shuttle Service may or may not be individually in the public transportation service, but Taxpayer's argument apparently reverts to the issue first raised In Part I above. Taxpayer asks that the Department disregard the substance and separate business identity of each of the seven related entities and treat the seven related entities as a single, public transportation business. Taxpayer asks too much. Taxpayer has failed to meet its burden of establishing the original assessment is wrong under IC § 6-8.1-5-1(c) because Taxpayer has failed to meet the criteria necessary to establish that Shuttle Service is in the public transportation business. Even if it had done so, there is little evidence that the transactions between Taxpayer and Shuttle were exempt.

FINDING

Taxpayer's protest is respectfully denied.

SUMMARY

As explained in Part III above, to the extent that Taxpayer supplies additional, complete invoices establishing that Taxpayer was paid to provide "drywall storage," Taxpayer's protest is sustained; additionally, subject to an audit review of documentation that establishes that Taxpayer leased trucks to a Michigan based customer, Taxpayer's protest is sustained; in all other respects, Taxpayer's protest is denied.

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